

AMENDED IN ASSEMBLY AUGUST 12, 2010

SENATE BILL

No. 1370

Introduced by Senator Ducheny

February 19, 2010

An act to amend Section 2751 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1370, as amended, Ducheny. Employment contract requirements.

Existing *statutory law, which has been held invalid by existing case law*, requires an employer who has no permanent and fixed place of business in the state and who enters into a contract of employment involving commissions as a method of payment with an employee for services to be rendered within the state to put the contract in writing and to set forth the method by which the commissions are required to be computed and paid. An employer who does not comply with those requirements is liable to the employee in a civil action for triple damages.

This bill would, *by January 1, 2012*, make this contract requirement applicable to all employers entering into a contract of employment involving commissions as a method of payment with an employee for services to be rendered in the state.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature hereby finds and declares that*
- 2 *this bill is enacted in light of the holding in Lett v. Paymentech,*

1 *Inc. (N.D.Cal. 1999) 81 F.Supp.2d 992 and that the intent of this*
2 *bill is to restore the employee protections that had been in effect*
3 *prior to that holding by making Sections 2751 and 2752 of the*
4 *Labor Code apply with equal force to employers with a fixed place*
5 *of business in the state as they do to employers who do not have*
6 *a fixed place of business in the state.*

7 **SECTION 1.**

8 **SEC. 2.** Section 2751 of the Labor Code is amended to read:

9 2751. (a) ~~Whenever~~ *By January 1, 2012, whenever* an
10 employer enters into a contract of employment with an employee
11 for services to be rendered within this state and the contemplated
12 method of payment of the employee involves commissions, the
13 contract shall be in writing and shall set forth the method by which
14 the commissions shall be computed and paid.

15 (b) The employer shall give a signed copy of the contract to
16 every employee who is a party thereto and shall obtain a signed
17 receipt for the contract from each employee. *In the case of a*
18 *contract that expires and where the parties nevertheless continue*
19 *to work under the terms of the expired contract, the contract terms*
20 *are presumed to remain in full force and effect until the contract*
21 *is superseded or employment is terminated by either party.*

22 (c) As used in this section, “commissions” *has the meaning set*
23 *forth in Section 204.1. “Commissions”* does not include short term
24 productivity bonuses such as are paid to retail clerks; and it does
25 not include bonus and profit-sharing plans, unless there has been
26 an offer by the employer to pay a fixed percentage of sales or
27 profits as compensation for work to be performed.